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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1942.

NO. 477

WILLIAM H. TEGTMEYER, et al.,
Respondents,

vs.

DAISY C. TEGTMEYER,
Petitioner.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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Petitioner.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

The respondents, Minnie Tegtmeyer, Administratrix of the Estate of William H. Tegtmeyer, deceased, Louis J. Boock and Philip F. Abboud, Executors of the Last Will and Testament of Anna L. Boock, deceased, William White, Wesley White, George White, Robert White, Louise A. Taubert and Albert Nave Wilson, respectfully ask that the petition of Daisy C. Tegtmeyer for writ of certiorari to review the orders of the Appellate Court of Illinois, First District, be denied for the following reasons:

I.

No Federal Question Has Been Saved.

(A) It must appear from the record that a Federal question was presented for decision, and that a decision of the Federal question was necessary to a determination of the cause.

Honeyman v. *Hanan*, 300 U. S. 14; (81 L. ed. 476).

(B) Petitioner by her appeal to the Appellate Court of Illinois waived any question as to a violation of her constitutional rights.

Pennsylvania R. Co. v. *Illinois Brick Co.*, 297 U. S. 447, pages 462-463.

L. & N. R. R. v. *Woodford*, 234 U. S. 46 (58 L. ed. 1202).

People v. *Rosenthal*, 370 Ill. 244.

People v. *Terrill*, 362 Ill. 61.

People v. *Lawson*, 351 Ill. 507.

Armour v. *Industrial Board*, 275 Ill. 328.

Edwardsville v. *Cent. Tel. Co.*, 309 Ill. 482.

Drtina v. *Charles Tea Co.*, 281 Ill. 259.

Miller Fire Ins. Co. v. *People*, 170 Ill. 474.

II.

No Substantial Federal Question Has Ever Been Raised in This Cause.

(A) The Eighth Amendment to the Constitution of the United States applies only to the National Government and does not apply to the State Government.

Ex Parte Spies, 123 U. S. 131 (31 L. ed. 80).

Collins v. *Johnston*, 237 U. S. 502 (59 L. ed. 1071)

(B) Imprisonment for civil contempt until the contemnor complies with the order of court does not violate the provisions of the Fourteenth Amendment to the Constitution of the United States.

Tinsley v. *Anderson*, 171 U. S. 101 (43 L. ed. 91).

(C) The parties were heard in the regular course of judicial proceedings and the decision of the state court, even if erroneous, does not deprive the unsuccessful party of her property without due process of law.

Rhodes v. *Ashurst*, 176 Ill. 351.

DeGrasse v. *Gossard Co.*, 236 Ill. 73.

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Bennett v. *Weber*, 323 Ill. 283.

Thompson v. *Dean*, 74 U. S. (7 Wall.) 342, 19 L. ed. 94.

Stovall v. *Banks*, 77 U. S. (10 Wall.) 583, 19 L. ed. 1036.

Central Land Co. v. *Laidley*, 159 U. S. 103, 40 L. ed. 91.

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Washington v. *Superior Court*, 289 U. S. 361, 77 L. ed. 1256.

Neblett v. *Carpenter*, 305 U. S. 297.

III.

All matters presented by the petitioner in the above matter were heretofore considered by this court and passed upon adversely to petitioner in denying her petition for certiorari filed at the October term, 1941, as No. 831, and she is now estopped from again presenting the same matters to this court.

Ex Parte Daisy C. Tegtmeyer (original) *Petitioner*, 298 U. S. 642, (80 L. ed. 1374).

Ex Parte Daisy C. Tegtmeyer (original) 305 U. S. 565 (83 L. ed. 356).

Tegtmeyer v. *Tegtmeyer*, 313 U. S. 568.

Hill v. *Jeffrey Co.*, 292 Ill. 490.

Hart Steel Co. v. *Railroad Supply Co.*, 244 U. S. 294.

United Shoe Mach. Co. v. *United States*, 258 U. S. 451.

Troxell v. *Del., Lack. & West. R. R.*, 227 U. S. 434.

Northern Pacific Railway v. *Slaght*, 205 U. S. 122.

Werlein v. *New Orleans*, 177 U. S. 390.

ARGUMENT.

I.

No Federal Question Has Been Saved.

(A) It must appear from the record that a Federal question was presented for decision, and that a decision of the Federal question was necessary to a determination of the cause.

The only attempt to present a Federal question is the bare statement that the petitioner has been deprived of her liberty and property in violation of the due process clause of the Federal Constitution. There is no suggestion as to the circumstances constituting a want of due process. The burden is on the petitioner to show in what manner her constitutional rights have been violated. She has not made such showing by merely referring to some section of the Constitution and by implication inviting the court to search the record and find some violation of her constitutional rights. In *Honeyman* v. *Hanan,* 300 U. S. 14 (81 L. ed. 476), at page 18 (479), the court said:

> "Before we may undertake to review a decision of the court of a State it must appear affirmatively from the record, not only that the Federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the Federal question was necessary to the determination of the cause. *Lynch* v. *New York,* 293 U. S. 52, 54, 79 L. ed. 191, 55 S. Ct. 16, and cases there cited."

The language above quoted clearly shows that the record must show affirmatively that the Federal question was presented, and must further show that the decision of the

Federal question was necessary to a determination of the case. The judgment of the Illinois courts, which petitioner seeks to have reviewed by her petition for certiorari, is the judgment entered in March, 1942, reported in 314 Ill. App. 16. In so far as material here, the decision the court in effect decided that the account (except as to a credit for taxes) was properly taken and stated. That decision presents no Federal question. In respects not material here the Appellate Court modified the decree but petitioner does not ask this court to review the decision of the Appellate Court of Illinois in those respects.

Not only does the record fail to show that any Federal question was presented, but it affirmatively appears that the decision of a Federal question was not necessary for a determination of the cause. The court might well have decided that the court was precluded from reviewing the case because all matters presented other than the manner of taking and stating the account had previously been decided.

(B) Petitioner by her appeal to the Appellate Court of Illinois waived any question as to a violation of her constitutional rights.

Under the Illinois practice, cases involving constitutional questions are appealed directly to the Supreme Court of the state and it has been repeatedly held that an appeal to the Appellate Court operates as a waiver of any constitutional question.

In *Pennsylvania R. Co.* v. *Illinois Brick Co.*, 297 U. S. 447, at 462-463, the court said:

> "The Illinois statute requires that in cases involving construction of the Federal Constitution appeals from circuit courts shall be taken directly to the supreme court. And, as definitely shown by its deci-

sions, that court will not take jurisdiction unless it appears from the record that the constitutional question was urged in the lower court, the ruling on it preserved in the record and the error assigned on appeal. While the order of that court transferring the case does not specify the grounds on which it was based, the petitioner states that the supreme court necessarily held the constitutional questions had not been properly raised and that, on the oral argument, the chief justice stated that the transfer would be made because of petitioner's failure properly to raise and preserve the constitutional questions. The appellate court so understood the grounds and effect of the order and held that by transferring the case the supreme court eliminated the constitutional questions. As the highest court of the State declined to consider them because not raised in the circuit court or presented to it in accordance with practice that unquestionably was well established and reasonable, this court is without jurisdiction to consider either of them." (Citing cases.)

The Federal question must be preserved in accordance with the rules of the state practice. In *Louisville & Nashville R. Co.* v. *Woodford,* 234 U. S. 46 (58 L. ed. 1202) at page 51 (1207), the court said:

> "The decisions of this court not only have repeatedly held that a Federal right, in order to be reviewable here, must be set up and denied in the state court, but have often held that such claim of denial is not properly brought to the attention of this court where it appears that the state court declined to pass upon the question because it was not raised in the trial court, as required by the state practice." (Citing cases.)

In *People* v. *Rosenthal,* 370 Ill. 244, Rosenthal was found guilty of contempt and sentenced to 3 days in the county jail. An appeal was taken to the Appellate Court where the judgment was affirmed and a writ of error was sued

out of the Supreme Court. In its decision, the court there said at page 247:

> "The first two contentions present constructions of the constitution. The Civil Practice act (Ill. Rev. Stat. 1937, chap. 110, par. 199) requires that all cases in which constitutional questions are raised must be taken directly to this court for review. If such a case is taken to the Appellate Court and other errors are assigned of which that court has jurisdiction, the plaintiff in error or appellant is held to have waived the constitutional questions. (*People* v. *Terrill,* 362 Ill. 61, and cases there cited.) The constitutional questions urged by plaintiffs in error cannot be considered."

There are numerous decisions to the same effect, including *People* v. *Terrill,* 362 Ill. 61; *People* v. *Lawson,* 351 Ill. 507; *Armour* v. *Industrial Board,* 275 Ill. 328; *Edwardsville* v. *Cent. Tel. Co.,* 309 Ill. 482; *Drtina* v. *Charles Tea Co.,* 281 Ill. 259; *Miller Fire Ins. Co.* v. *People,* 170 Ill. 474.

II.

No Substantial Federal Question Has Ever Been Raised in This Cause.

(A) The Eighth Amendment to the Constitution of the United States applies only to the National Government and does not apply to the State Government.

Petitioner's suggestion that she is being deprived of constitutional rights guaranteed to her by the Eighth Amendment to the Constitution of the United States does not present a substantial Federal question because that amendment has no application to the State Government. In *Ex parte: Spies,* 123 U. S. 131, 31 L. ed. 80, at page 86, the court said:

"That the first ten articles of amendment were not intended to limit the powers of the state governments in respect to their own people, but to operate on the National Government alone, was decided more than a half century ago, and that decision has been steadily adhered to since."

In *Collins* v. *Johnston,* 237 U. S. 502, at 510 and 511, 59 L. ed. 1071, at 1079, the court said:

"The 8th Amendment is also invoked, with its prohibition of cruel and unusual punishments; but, as has been often pointed out, this is a limitation upon the Federal government, not upon the states." (Citing cases.)

(B) Imprisonment for civil contempt until the contemnor complies with the order of court does not violate the provisions of the Fourteenth Amendment to the Constitution of the United States.

The petitioner, Daisy C. Tegtmeyer, fails to state in what manner her rights guaranteed by the Constitution of the United States have been violated. However, the decree of March 13, 1941 finds the amount she owes and ratifies a prior order by which she was committed to jail for contempt of court for her refusal to comply with the court's orders. Her imprisonment under those circumstances does not present a substantial Federal question. In *Tinsley* v. *Anderson,* 171 U. S. 101 (43 L. ed. 91) Tinsley was ordered to turn over to the receiver of a corporation certain books and records which he had in his possession as an officer of the corporation. He failed to comply with the order and was committed to jail for contempt and sought his release from imprisonment on the ground that his constitutional rights had been violated.

The court said, at page 107 (97):

"The other objections suggested require no special

consideration. It is said that the imprisonment for contempt was limited by the state statute to three days (art. 1101, Tex. Rev. Stat.), but the state court held that that statute had reference to a quasi-criminal contempt as a punishment, and not to a civil contempt, where the authority of the court is exercised by way of compelling obedience. Rapalje, Contempt, sec. 21. This is not a Federal question, and we accept the ruling of the state court in its construction of the statute. It is urged that the order of commitment imposed an uncertain and indefinite term of imprisonment; but the order was that Tinsley should be confined until he complied, and the addition, 'or * * * until he shall be discharged by the further order of the court,' was merely intended to retain the power to discharge him if the court should thereafter conclude to do so, it being within his own power to obtain his discharge at any time by obeying the order. Nor is there any force in the objection that no trial by jury was awarded, for such trial was not demanded, and a jury trial is not necessary to due process of law on an inquiry for contempt." (Citing cases.)

The petitioner contends that she is brought into this case only as a guarantor for her husband but the record discloses that petitioner had possession and control of trust funds which for years she has wilfully concealed. The record filed by petitioner herein does not contain the pleadings nor the decree of March 18, 1930 but in her petition reference is made to the decision of the Supreme Court of Illinois in *Tegtmeyer* v. *Tegtmeyer,* 348 Ill. 434. It there appears that petitioner's husband, Edward Tegtmeyer, received $5,000 in accordance with the provisions of an agreement (see pages 25 and 26 of typewritten petition) and with reference thereto the court says on page 437:

"After the execution of this agreement the estate of Henry was closed and the assets distributed ex-

cept the $5000 covered by the contract. In August, 1913, before the trust agreement was executed, Edward, without the knowledge or consent of the other heirs, took $5000 from the estate of Henry and invested it, together with $13,000 of his own funds and those of his wife, in vacant real estate in Chicago. Title to the land was taken in the names of Edward and Daisy. Edward died on November 1, 1924, leaving Daisy as his widow and sole heir-at-law.

"The original bill was filed on March 11, 1925. It set up the facts substantially as above stated. After the bill was filed, Daisy Tegtmeyer on March 18, 1925, made a contract to sell the real estate in which the trust fund was invested. The Chicago Title and Trust Company refused to issue to the purchasers a title guaranty policy unless $10,000 was deposited with it to protect it against the outcome of this litigation. Daisy deposited the $10,000, and on April 20, 1925, a deed was executed to the purchasers and $46,240.01 was paid as the purchase price. The proceeds of this sale, including the $10,000 deposited with the Chicago Title and Trust Company, were invested by Daisy in stock of the Commonwealth Edison Company, the Middle West Utilities Company and the American Telephone and Telegraph Company. On May 1, 1925, an amended bill was filed. It described the real estate purchased by Edward and Daisy and alleged that it had been purchased in whole or in part with the proceeds of the trust fund in breach of the trust agreement, and that defendants in error were entitled to a conveyance of these premises or an undivided interest therein. It set up the contract of March 18, 1925, to sell this real estate. On June 18, 1926, an amended and supplemental bill was filed, which alleged that Daisy had appropriated the trust fund, and the proceeds thereof, and had invested them in various properties. The master on May 18, 1929, filed his report, in which he recommended that, pending an accounting, Daisy and the Chicago Title and Trust Company be restrained from disposing of the $10,000 or the securities substituted therefor, and that Daisy be restrained,

pending the accounting, from disposing of the stock of the American Telephone and Telegraph Company held by her. On January 10, 1930, the bill was again amended by alleging that Edward and Daisy had admitted that the $5000 trust fund was invested in the real estate and that it was held by them subject to the trust. The decree was entered March 18, 1930, and it directed Daisy to file an account setting out in detail all property in which the $5000 trust fund, or any part thereof, had been invested or intermingled, including all profits from investments."

(C) The parties were heard in the regular course of judicial proceedings and the decision of the state court even if erroneous does not deprive the unsuccessful party of her property without due process of law.

This proceeding was begun in 1925 and the petitioner was duly served with process and throughout the proceedings she has been represented by many counsel. After extensive hearings before the Master in Chancery and hearings before the court upon the motion to approve the Master's report, a decree was entered on March 18, 1930, by which the rights of the parties were fully adjudicated. The petitioner herein appealed from that decree to the Appellate Court of Illinois, where the decree was affirmed (*Tegtmeyer* v. *Tegtmeyer,* 259 Ill. App 661), and the petitioner herein thereafter obtained a review of that decree by the Supreme Court of Illinois, where the decree was likewise affirmed. (*Tegtmeyer* v. *Tegtmeyer,* 348 Ill. 434.) The decision of the Supreme Court was rendered in 1932 and the decree of March 18, 1930, thereupon became final and nothing remained to be done but take the accounting. By the decree the cause was referred to a Master in Chancery for the purpose of taking and stating an account.

Under the practice in Illinois the decree of March 18, 1930, was a final decree. The time in which an application could be made to this court for writ of certiorari to re-

view the decision of the Illinois Supreme Court affirming that decree expired in 1932. The Illinois practice is discussed in *Rhodes* v. *Ashurst,* 176 Ill. 351, at page 353, where the court said:

> "The practice in chancery where an accounting is prayed and where the right to an account is denied is, that the preliminary matter in bar of the accounting should first be disposed of. A decree is then entered finding the facts to exist which give a right to the accounting, directing the basis of the account, and referring the whole matter to the master in chancery to take evidence as to the state of the account, and to report the evidence and a statement of the account. (*Ligare* v. *Peacock,* 109 Ill. 94.) Such a decree was entered in this case, and whatever might have been its effect as res judicata had it not been appealed from, the plaintiffs in error certainly are now concluded by it. Having appealed from it and having procured the decision of this court upon the questions involved, they cannot now be heard to say that it was merely interlocutory. 5 Ency. of Pl. & Pr. p. 1046."

In *DeGrasse* v. *Gossard Co.,* 236 Ill. 73, the court, among other things, quotes from *Gray* v. *Ames,* 220 Ill. 251, as follows:

> "'A final decree is one which fully decides and finally disposes of the entire merits of the case. Some other order or decree of the court may be necessary to carry into effect the rights of the parties or some incidental matter may be reserved for consideration, which decision, either one way or another, cannot have the effect of altering the decree by which the rights of the parties have been declared. A decree is final even where, as a mere incident to the relief granted, it directs a reference to a master to state an account. Where accounts are to be settled between the parties and the decree contains an order of reference by which the accounts are to be stated according to certain principles fixed by the decree, such order of reference will

not have the effect of rendering the decree interlocutory.' "

To the same effect see *Bennett* v. *Weber,* 323 Ill. 283, at pages 292 and 293.

The practice prevailing in Illinois in such cases is consistent with the rule prevailing in the Federal Court. In *Thompson* v. *Dean,* 74 U. S. (7 Wall.) 342, 19 L. ed. 94, the decree directed the defendant therein to transfer forthwith certain shares of stock to certain plaintiffs therein and directed that an account be taken and stated as to the amount paid and to be paid for the stock and as to dividends accrued and to be credited under the contracts between the parties. The decree, for the purpose of giving jurisdiction to the Supreme Court, was held to be final. In *Stovall* v. *Banks,* 77 U. S. (10 Wall.) 583, 19 L. ed. 1036, the decree adjudged that certain assets were in the hands of the administrator and ordered distribution thereof and directed the issuance of execution for the respective sums due the several distributees. The decree after fixing the respective amounts due and directing the issuance of execution, went on to direct that the administrator be allowed the principal and interest of any note held by him against any of the several distributees, and directed that the several sums should be subjected to ratable deduction for fees yet unpaid for the collection of notes belonging to the administrator. In deciding that the decree was a final decree notwithstanding the amounts were to be later determined, the court said:

"It is not unusual in courts of equity to enter decrees determining the rights of parties, and the extent of the liability of one party to the other, giving at the same time a right to apply to the court for modifications and directions. It has never been doubted that such decrees are final. They are all that is necessary

> to give to the successful party the full benefit of the judgment. In 2 Daniell's Chancery Practice, 641, 642, the effect of allowing the privilege of making such applications to the *Chancellor,* is stated to be no alteration of the final nature of the decree. Says the author, 'A decree with such a liberty reserved is still a final decree, and, when signed and enrolled, may be pleaded in bar to another suit for the same matter.' So in *Mills* v. *Hoag,* 7 Paige, 19, it was said that 'a decree is not the less final in its nature because some future orders of the court may possibly become necessary to carry such final decree into effect.' ''

The decree of March 13, 1941, approved an accounting taken in conformity with the decree of March 18, 1930, affirmed by the Illinois Supreme Court in 1932, *Tegtmeyer* v. *Tegtmeyer,* 348 Ill. 434. The Illinois Appellate and Supreme Court in reviewing the decree of March 13, 1941, could not review any of the matters adjudicated by the decree of March 18, 1930. The only questions that could be raised respecting the decree of March 13, 1941 are whether the account was taken and stated in conformity with the prior decree and whether the decree respecting petitioner's commitment for contempt was in substantial compliance with the prior order. Plaintiff does not even suggest that the account was not stated in conformity with a prior decree nor does she suggest that the decree adjudging her guilty of contempt was not in conformity with the prior order which adjudged her guilty of contempt. There was really nothing else before the Appellate and Supreme Court in connection with their review of the decree of March 13, 1941.

Notwithstanding the law as set forth in the decisions above mentioned, petitioner says that the decision of the Supreme Court of Illinois reported in *Tegtmeyer* v. *Tegtmeyer,* 348 Ill. 434, affirming the decree of March 18, 1930,

was interlocutory in its nature and says she therefore could not file a petition for certiorari to review that decision. In support of her contention she cites *Gant* v. *Oklahoma*, 284 U. S. 594. The case cited merely says the appeal was dismissed for want of jurisdiction without specifying the circumstances constituting the lack of jurisdiction. However, the decision of the Oklahoma Supreme Court, 150 Okla. 86, 6 Pacif. (2d) 1065, in that same case discloses that the appeal was from an order granting a temporary injunction. There is no analogy between that case and the instant case. An order granting a temporary injunction is intended merely to preserve the *status quo* pending final disposition of the case and does not purport to finally adjudicate any rights. The decree for an accounting is a final adjudication of the parties' right to have an accounting.

The proceedings in the instant case were in all respects regular and in conformity with the laws of Illinois. The real substance of the petitioner's complaint is that she did not like the decision. There was no violation of her constitutional rights because the trial and decision was in accordance with the law of the land, and present no federal question.

In *Central Land Co.* v. *Laidley*, 159 U. S. 103, (40 L. ed. 91) at 112, the court said:

> "When the parties have been fully heard in the regular course of judicial proceedings, an erroneous decision of a state court does not deprive the unsuccessful party of his property without due process of law, within the Fourteenth Amendment of the Constitution of the United States."

In *Davidson* v. *New Orleans*, 96 U. S. 97, at page 105, the court said:

> "But however this may be, or under whatever other clause of the Federal Constitution we may review the

case, it is not possible to hold that a party has, without due process of law, been deprived of his property, when, as regards the issues affecting it, he has, by the laws of the State, a fair trial in a court of justice, according to the modes of proceeding applicable to such a case. This was clearly stated by this court, speaking by the Chief Justice, in *Kennard* v. *Morgan* (92 U. S. 480), and, in substance, repeated at the present term in *McMillan* v. *Anderson* (95 id. 37).

In *Walker* v. *Sauvinet,* 92 U. S. 90, at page 93, the court said:

> "Due process of law is process due according to the law of the land. This process in the States is regulated by the law of the State."

In *McDonald* v. *Oregon, etc. Navigation Co.,* 233 U. S. 665, (58 L. ed. 1145) at 669-670, the court said:

> "It is elementary and needs no citation of authority to show that the due process clause of the Fourteenth Amendment does not control methods of state procedure or give jurisdiction to this court to review mere errors of law alleged to have been committed by a state court in the performance of its duties within the scope of its authority concerning matters non-Federal in character."

In *Abbott* v. *Tacoma Bank of Commerce,* 175 U. S. 409 (44 L. ed. 217), at pages 413-414, the court said:

> "But even if reputation could be deemed property within the meaning of the Fourteenth Amendment, the state court did nothing that could be regarded within the meaning of the Constitution, as depriving the plaintiff of his reputation. It only adjudged that the words used in a pleading in another suit could not be made the foundation of an action for damages. If it erred in so declaring, it was an error as to a matter of general law and involved no question of a Federal nature;"

In *Kammerer* v. *Kroeger*, 299 U. S. 302, (81 L. ed. 253) at 303-304, the court said:

> "We find no basis for the contention that in denying appellants' claim to be paid their counsel fees and expenses out of the assets in the hands of the liquidator, upon the ground that the court was without jurisdiction to make such an allowance, any right of the appellants under the Federal Constitution has been infringed. The question is one of state practice and remedy. The motions to dismiss the appeals are granted and the appeals are dismissed for want of a substantial federal question."

In *Washington* v. *Superior Court of the State*, 289 U. S. 361 (77 L. ed. 1256), at page 366, the court said:

> "Appellant suggests that it was denied due process because the Act demands service upon the Secretary of State, whereas the summons and complaint were handed to an assistant Secretary. The State court has held the service sufficient since the assistant Secretary in contemplation of law was the Secretary. This construction of the statute raises no federal question."

In *Neblett* v. *Carpenter*, 305 U. S. 297, contentions were made that the due process clause of the Federal constitution had been violated in that the Commissioner of Insurance was said to have delegated certain powers and to have exceeded the authority conferred upon him by the statute. This court said, at page 302:

> "It is claimed that the Commissioner's action violated certain state statutes concerning fraudulent conveyances. The state court held the contrary.
>
> "All of these holdings concern matters of state law and amount at most to alleged erroneous constructions of the State's statutes by its own court of last resort. Such decisions would not be a denial of the

due process guaranteed by the Fourteenth Amendment. We are, therefore, without jurisdiction to review the state court's decision of any of those questions.

"It is argued that the Code unconstitutionally delegates legislative functions to the Commissioner, and that the Supreme Court erred in not so holding. This, again, is a question of state law the decision of which by the State's highest court is binding upon us."

III.

All matters presented by the petitioner in the above matter were heretofore considered by this court and passed upon adversely to petitioner in denying her petition for certiorari filed at the October term, 1941, as No. 831, and she is now estopped from again presenting these same matters to this court.

The petitioner has sought to have this court review the proceedings of the Illinois courts relating to her on three previous occasions. She sought to obtain release from imprisonment for contempt in her petition for writ of habeas corpus, which was denied May 18, 1936 (original) *Ex parte Daisy C. Tegtmeyer, petitioner,* 298 U. S. 642 (80 L. ed. 1374). At a later date she again sought to obtain release from her imprisonment for contempt of court and presented her motion for leave to file a petition for writ of habeas corpus, which was denied October 17, 1938. (original) *Ex parte Daisy C. Tegtmeyer,* 305 U. S. 566 (80 L. ed. 536). At the October term, 1940, she filed a petition for a writ of certiorari to review a decision of the Appellate Court of Illinois rendered in this same cause. The petition was No. 831 and was denied April 28, 1941. (*Tegtmeyer* v. *Tegtmeyer,* 313 U. S. 568.)

In her petition filed at the October term, 1940, the petitioner set forth substantially the same claims she sets

forth in her petition in the instant case. She there claimed, as she does here, that the Illinois courts had no jurisdiction over the subject matter of this cause, but that exclusive jurisdiction of the subject matter was vested in the Probate Court of Des Moines County, Iowa, which court could not, through its process, reach either the funds or the petitioner. She also claimed that the entire proceedings were in violation of the due process clause of the Federal constitution and that the judgment committing her for contempt of court was in violation of her constitutional rights.

The petitioner's contention that the Illinois courts were without jurisdiction of the subject matter of this cause does not warrant serious consideration and may be excused and overlooked because petitioner is a lay person and not a lawyer. Petitioner cites no authorities in support of that contention. No such authority is to be found because no litigant, except the petitioner in this cause, would have ever made such a baseless contention. The trust funds were in Illinois and the petitioner was in Illinois. The petitioner with the funds in her possession would be immune from the process of the Iowa court. Both she and the trust funds were amenable to the process of the Illinois court. Her assertion that the Iowa court had jurisdiction to the exclusion of the Illinois court is a manifestation of her continued contempt for the judiciary.

We have heretofore shown that the decree adjudging the petitioner guilty of contempt of court and committing her to jail until she complied with the court's order did not present any Federal question. In any event, the decree in that respect merely confirmed the order of January 5, 1934, and if there were any violation of her constitutional rights in connection with her commitment to jail for contempt, she was required to assert those rights in apt time. The order of January 5, 1934, was a final order from which an

appeal could then have been taken. (*Hill* v. *Jeffrey Co.*, 292 Ill. 490.) She heretofore presented to this court two petitions for a writ of habeas corpus to obtain relief from her imprisonment for contempt, and in addition, she questioned the validity of the contempt in her petition for certiorari filed in the October term, 1940. We have further shown that the petitioner's constitutional rights were in no way violated by a decree entered in the usual course of judicial proceedings in accordance with the laws of the State of Illinois. However, if petitioner's constitutional rights were violated and she desired a review by this court, she should have filed her petition in apt time after the Supreme Court of Illinois in 1932 affirmed the original decree in this cause.

It is not the contention of respondents that the action of the court in denying a petition for certiorari constitutes an approval of all that was said or the reasons given for the decision sought to be reviewed so as to bind the court in deciding subsequent cases involving the same principles. On the contrary, in *Atlantic Coast R. Co.* v. *Powe*, 283 U. S. 401, at pages 403-404, the court quotes from *U. S.* v. *Carver*, 260 U. S. 482, at page 490, as follows:

> " 'The denial of a writ of certiorari imports no expression of opinion upon the merits of the case, as the bar has been told many times.' "

The principle here contended for is not similar to the above case. The court there was asked to adopt certain principles in cases where the court had denied a petition for certiorari. In the instant case, the petitioner seeks to present the same matters that she previously presented to this court, and which were ruled upon by this court.

It is a familiar principle that there must be an end to litigation. When the matter has once been presented and

passed upon, the same matter cannot again be presented for consideration. The petitioner is again presenting for the consideration of this court substantially the same matters she presented to this court in case No. 831 of the October term, 1940.

No matters are presented in the instant petition that arose subsequent to the time of filing the petition at the October term, 1940. While the decree of March 13, 1941, was entered subsequent to the time of the filing of that petition, the questions here presented relate to the exercise of jurisdiction in the case throughout the entire proceeding and to the order adjudging petitioner guilty of contempt, which was entered January 5, 1934. No question is presented, therefore, that could not have been presented at the time of the filing of the petition at the October term, 1940. By the decision of this court entered April 28, 1941, denying certiorari, the petitioner is estopped from again presenting any of the matters set forth in her petition herein.

In *Hart Steel Co.* v. *Railroad Supply Co.*, 244 U. S. 294, the court said, at page 299:

> "This doctrine of *res judicata* is not a mere matter of practice or procedure inherited from a more technical time than ours. It is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts to the end that rights once established by the final judgment of a court of competent jurisdiction shall be recognized by those who are bound by it in every way, wherever the judgment is entitled to respect."

In *United Shoe Mach. Co.* v. *United States*, 258 U. S. 451, at pages 458-459, the court said:

> "Perhaps the leading case in this court upon the

subject of estoppel by former judgment is *Cromwell* v. *County of Sac*, 94 U. S. 351, 352, in which this court, speaking by Mr. Justice Field, laid down the general rule of law, which has been followed in subsequent cases:

"'* * * there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action, * * * concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose * * *. But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been thus litigated and determined.'"

In *Troxell* v. *Del., Lack. & West. R. R.*, 227 U. S. 434, at page 440, the court said:

"Where the second suit is upon the same cause of action set up in the first suit, an estoppel by judgment arises in respect to every matter offered or received in evidence, or which might have been offered, to sustain or defeat the claim in controversy; but, where the second suit is upon a different claim or demand, the prior judgment operates as an estoppel only as to mat-

ters in issue or points controverted and actually determined in the original suit. *Cromwell* v. *Sac County*, 94 U. S. 351, 352, 353; *Southern Pacific Railroad Co.* v. *United States*, 168 U. S. 1, 50; *Virginia-Carolina Chemical Co.* v. *Kirven*, 215 U. S. 252, 257."

In *Northern Pacific Railway* v. *Slaght*, 205 U. S. 122, at pages 130-131, the court said:

"It is well established that a judgment on demurrer is as conclusive as one rendered upon proof. *Gould* v. *Evansville & Crawfordsville R. R. Co.*, 91 U. S. 526; *Bissel* v. *Spring Valley Township*, 124 U. S. 228; Freeman on Judgments, section 267. The question as to such judgment when pleaded in bar of another action will be necessarily its legal identity with such action. The general rule of the extent of the bar is not only what was pleaded or litigated, but what could have been pleaded or litigated. There is a difference between the effect of a judgment as a bar against the prosecution of a second action of the same claim or demand, and its effect as an estoppel in another action between the same parties upon another claim or demand, *Cromwell* v. *County of Sac*, 94 U. S. 351; *Bissel* v. *Spring Valley Township*, 124 U. S. 225; *New Orleans* v. *Citizens Bank*, 167 U. S. 371; *Southern Pacific Railroad Company* v. *United States*, 168 U. S. 1; *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273; *Deposit Bank* v. *Frankfort*, 191 U. S. 499, and a distinction between personal actions and real actions is useful to observe. Herman on Estoppel, § 92. It is there said: 'Although there may be several different claims for the same thing, there can be only one right of property in it; therefore, when a cause of action has resulted in favor of the defendant, when the plaintiff claims the property of a certain thing there can be no other action maintained against the same party for the same property, for that would be to renew the question already decided, for the single question in litigation was whether the property belonged to the plaintiff or not; and it is of no importance that the plaintiff

failed to set up all his rights upon which his cause of action could have been maintained; it is sufficient that it might have been litigated.' "

In *Werlein* v. *New Orleans,* 177 U. S. 390, at page 397, the court said:

"In the first cited case, it was said that a former judgment between the same parties (or their privies) upon the same cause of action as that stated in the second case constitutes an absolute bar to the prosecution of the second action, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Where the second action between the same parties is upon a different claim or demand, the judgment in the former action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered."

Conclusion.

The petition and record when tested by the rules above referred to show that no Federal question has been saved for review because (1) the record does not show that any Federal question was raised in the proceeding which the court is now asked to review; (2) if such a Federal question had been raised, it was not decided and not necessary to a decision because the decision was to the effect that all questions raised had been disposed of on a previous appeal; (3) the petitioner by her appeal to the Appellate Court, under the Illinois practice, waived any constitutional question; (4) no substantial Federal question has ever been raised because Article VIII of Amendments to the Constitution of the United States, referred to by the petition, applies only to the Federal Government and does

not apply to the State government; and (5) imprisonment for contempt to compel obedience to the order of a chancery court does not constitute depriving the contemnor of her liberty without due process of law. The respondents therefore ask that the petition be denied to the end that this interminable litigation cease.

Respectfully submitted,

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